



**Medtronic**

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## Facsimile Cover Sheet

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**Date:** March 4, 2004

**Pages including this  
cover page:**

**Comments:**

In re Application of: Riff et al.  
For: MEDICAL DEVICE SYSTEMS IMPLEMENTED NETWORK SCHEME FOR  
REMOTE PATIENT MANAGEMENT  
Serial No.: 09/943,193  
Filed: August 29, 2001

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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Applicant(s): Riff et al.	) Art Unit: 3626
Serial No.: 09/943,139	) Examiner: V. Frenel
Filed: August 29, 2001	) Docket: P9618.00

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For: MEDICAL DEVICE SYSTEMS IMPLEMENTED NETWORK SCHEME FOR  
REMOTE PATIENT MANAGEMENT

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**PROPOSED INTERVIEW AGENDA**  
TELEPHONIC INTERVIEW  
TUESDAY, MARCH 9<sup>TH</sup> 2004  
11:30 A.M. (EST)

Attn: SPE Thomas & Examiner Frenel  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Goals:**

- Withdrawal of finality of the October 20, 2003 Office Action.
- Issuance of a new, complete, accurate, fully supported Office Action that is legally and procedurally sufficient, either supporting a proper rejection or indicating allowability.

**Discussion Points:****1) INCOMPREHENSIBLE OFFICE ACTION**

The language of the Final Office Action is literally incomprehensible and so illogical that Applicant cannot possibly formulate a fair understanding of the Examiner's position/interpretation of art, let alone formulate a response. Specific examples are set forth in Applicant's After Final Response and can be explained more fully during the telephone interview.

-Dis

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## 2) FAILURE TO ADDRESS INCOMPREHENSIBILITY OF OFFICE ACTION

The above points were emphasized in the first paragraph of the After Final Response. Applicant is troubled by the fact that the issue was completely ignored in the Advisory Action and is frankly surprised that a new Office Action was not provided as a matter of course.

## 3) GROUNDS OF REJECTION

*Disagree*

### a) References Relied On/Claim(s) Rejected not identified

The Examiner has asserted that the failure to cite, discuss, refer to or in any way include a reference (Brown) as part of a rejection under 35 USC 103(a) is an "inadvertent typographical error." Correctly identifying the references relied on is the most basic element of a proper rejection and must be accurate in a formal record. Certainly there are instances where Applicant may be expected to overlook minor typographical errors or minor omissions where context makes a position clear; this is not such a case.

Also note that the final paragraph of page three of the Final Office Action refers to Claim 1, appears out of context, and further confuses this issue.

### b) Office Action Fails to Establish a Prima Facie Case of Obviousness

Closely related to paragraph 1 above, the Final Office action does not set out a proper case for obviousness, in either a practical or legal sense. In summary, the Office Action contains almost no support for any given rejection. There is no analysis of what the references do and do not teach; no arguments/analysis relating to the Examiner's positions and no consideration of the claims as a whole. What is provided are extensive, but mostly irrelevant and unnecessary, quotations from references, portions of form paragraph language, and references to isolated claim elements.

*Disagree*

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Again, please note that for purposes of this interview, the concern is not the substance of the references or whether the Examiner's interpretation is incorrect, but rather that the Examiner's interpretation has not been set forth in a manner that would be considered sufficient under any standard.

**4) MISAPPLICATION OF THE LAW**

*Disagree*  
Applicant disqualified the Kricken reference. Applicant's statement in the After Final Response satisfies MPEP 706.02(l)(2)(II). At the relevant time, the inventor's were subject to an obligation to assign and the same was so stated by Applicant's representative. The date of recording the assignment is irrelevant and the Examiner may not rely on the reference.

**5) FAILURE TO CONSIDER AND RESPOND TO PROPER ARGUMENTS**

In summary, the Examiner (in both the Final Office Action and the Advisory Action) clearly did not actually consider the merits of the arguments presented. This is evidenced by the fact a) only a select few of the argument's and major issues are actually acknowledged and b) the only response to most of this is SOLELY the recitation of form paragraph legal citations.

For example, consider paragraph (B) of the Advisory Action. This form paragraph is the complete response to an argument/issue that is enumerated (and greatly condensed) by the Examiner.

Consider Paragraph (D) of the Final Office Action. If you remove the "stock" language (which is not really even relevant to the actual arguments), there is virtually no treatment of the merits.

The issue is not whether Applicant's position is correct, but whether it is even being fully and accurately considered.

*Time  
Resistant  
on  
Examination*

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**CONCLUSION**

Any one of the items discussed above is grounds to require withdrawal of the finality of the previous Office Action and the issuance of another.

Respectfully submitted,

Date: 3/4/04

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